

159  
**MORIHARA LAU & FONG LLP**  
A LIMITED LIABILITY LAW PARTNERSHIP

FILED

TRANSMITTAL MEMORANDUM

2006 MAR -2 P 1: 02

PUBLIC UTILITIES  
COMMISSION

TO: Nichole Shimamoto, Esq.  
Public Utilities Commission  
465 S. King Street  
Honolulu, HI 96813

FROM: Michael H. Lau 

DATE: March 2, 2006

☐ MAIL ☒ HAND DELIVER ☐ COURIER ☐ PICK-UP

| COPIES | DATE   | DESCRIPTION                               |
|--------|--------|---|
| 0+1    | 3/2/06 | Executed Stipulation for Protective Order |

|  |  |
|--|--|
| <input type="checkbox"/> For your information                              | <input checked="" type="checkbox"/> For necessary action |
| <input type="checkbox"/> For signature & return                            | <input type="checkbox"/> Per your request                |
| <input type="checkbox"/> For signature, forwarding as noted below & return | <input type="checkbox"/> Per our conversation            |
| <input type="checkbox"/> For review & comment                              | <input type="checkbox"/> For your approval               |
| <input type="checkbox"/> For correction                                    | <input type="checkbox"/> Approved as noted               |
| <input type="checkbox"/> For distribution                                  | <input type="checkbox"/> Returned for corrections        |
| <input type="checkbox"/> For recording/filing                              | <input type="checkbox"/> Disapproved                     |
| <input type="checkbox"/> For payment                                       | <input type="checkbox"/> For your files                  |
|  | <input type="checkbox"/> See remarks below               |

Per our discussion

cc: ☐ w/ enc. ☐ w/o enc.

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

----- In the Matter of ----- )

PUBLIC UTILITIES COMMISSION )

Instituting a Proceeding to Investigate )  
the Issues and Requirements Raised by, )  
and Contained in, Hawaii Revised )  
Statutes Chapter 486H, as Amended )  
\_\_\_\_\_ )

DOCKET NO. 05-0002

PUBLIC UTILITIES  
COMMISSION

2006 MAR -2 P 1:02

FILED

PROTECTIVE ORDER NO. \_\_\_\_\_

STIPULATION FOR PROTECTIVE ORDER

EXHIBIT A

and

CERTIFICATE OF SERVICE

Filed \_\_\_\_\_, 2006

At \_\_\_\_\_ o'clock \_\_\_\_ .m.

\_\_\_\_\_  
Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

|   |   |                    |
|---|---|--------------------|
| ----- In the Matter of -----            | ) |                    |
|   | ) |                    |
| PUBLIC UTILITIES COMMISSION             | ) | DOCKET NO. 05-0002 |
|   | ) |                    |
| Instituting a Proceeding to Investigate | ) |                    |
| the Issues and Requirements Raised by,  | ) |                    |
| and Contained in, Hawaii Revised        | ) |                    |
| Statutes Chapter 486H, as Amended       | ) |                    |
| _____                                   | ) |                    |

STIPULATION FOR PROTECTIVE ORDER

WHEREAS, Chevron U.S.A. Inc. ("Chevron"), Tesoro Hawaii Corporation ("Tesoro"), Shell Oil Company ("Shell"), members of Hawaii Petroleum Marketers Association ("HPMA"), and the Division of Consumer Advocacy are parties to this proceeding;

WHEREAS, the Public Utilities Commission of the State of Hawaii ("Commission") issued Order No. 22056 on September 28, 2005 and sought a proposal to adjust the HRS § 486H-13 factors to include the addition of ethanol blending requirements, which would take effect on or about April 2006;<sup>1</sup>

WHEREAS, Chevron, Tesoro, Shell, and certain members of HPMA each submitted, pursuant to protective order, their respective proposals to address the ethanol blending matters;

---

<sup>1</sup> Order No. 22056 also requested that the parties provide a marketing margin proposal further refining the class of trade approach suggested by ICF Consulting, LLC.



non-disclosure agreements with consultants or other third parties, (4) directly or indirectly give another Party or persons not a party to these proceedings information which the Party or person could use to its competitive advantage and/or to the competitive disadvantage of the submitting Party, (5) jeopardize or otherwise subject to risk the safety of the personnel, plants, equipment, operations or general activities of the submitting Party, or (6) otherwise be used to the detriment of the interests of the submitting Party;

WHEREAS, the Parties desire to establish a set of procedures and provisions pertaining to the use and disclosure of information considered to be confidential, business sensitive, trade secrets, and/or proprietary and any information which any Party may in the future contend to be confidential, business sensitive, trade secrets and/or proprietary (hereinafter individually and collectively "Confidential Information") arising out of or related to the Ethanol Briefings; and

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, in accordance with Section 6-61-50 of the Rules of Practice and Procedure before the Public Utilities Commission ("Commission's Rules"), that the Commission issue a protective order covering the Confidential Information identified in the course of the Ethanol Briefings as follows:

#### TERMS OF THE ORDER

1. This protective order governs the classification, acquisition, and use of Confidential Information produced or disclosed by the Party pursuant to, arising out of, or related to the Ethanol Briefings. The execution of this stipulation

shall not be deemed to be a waiver of any legal rights or privileges, or of the right to contest the disclosure of any of the information requested.

2. Except as otherwise provided below, any person obtaining Confidential Information pursuant to, arising out of, or related to the Ethanol Briefings or obtaining Confidential Information, directly or indirectly from someone under circumstances in which the ultimate source of the information was from the Ethanol Briefings shall be subject to this protective order.

#### APPLICATION OF THE UNIFORM INFORMATION PRACTICES ACT

3. To the extent that any of the documents covered by this protective order consist of "government records," as defined in HRS Section 92F-3, the provisions of HRS Chapter 92F ("Uniform Information Practices Act" or "UIPA") shall apply to the disclosure of information contained in such documents except where, pursuant to HRS Section 92F-13: (1) the Confidential information, if disclosed, would constitute a clearly unwarranted invasion of personal privacy; (2) the Confidential information pertains to the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent that such records would not be discoverable; (3) the Confidential Information, by their nature, must be confidential in order for the Commission to avoid the frustration of a legitimate government function; or (4) the Confidential Information, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure. In addition to other applicable exceptions to disclosure under the UIPA, (1) the Confidential Information, by their nature, must be confidential in order for the Commission to avoid the frustration of a

legitimate government function; and (2) the Confidential Information is protected from disclosure by Section 6-61-50 of the Commission's Rules, HRS Chapter 486J, and applicable state or federal law. In the event any provision of this protective order conflicts with any provision of the UIPA, the UIPA shall control.

### CLASSIFICATION

4. A Party may designate as confidential any information it believes, in good faith, contains Confidential Information. Such information shall be protected against disclosure to a non-qualified person pursuant to the terms of this protective order, unless such information is declassified, or permission to disclose the information to such non-qualified person is granted by the Party claiming confidentiality, as provided in paragraph 13 below. In addition, a Party may designate certain information (including information that the Party would not normally disclose to competitors, customers, or suppliers) as being confidential and not to be distributed to other Parties (not including the Consumer Advocate) by notifying the Commission and the Consumer Advocate in writing setting forth in particularity the information to be kept as confidential and not available to the other Parties (hereinafter referred to as the "Level Two Confidential Information"). With respect to such Level Two Confidential Information, (a) the Parties from whom such information is being withheld shall be treated as a non-qualified person from whom such information shall be protected against disclosure in accordance with the terms of this protective order and (b) except as limited in subpart (a) above, in all other respects, the Level Two Confidential Information shall be treated in the same manner as all other Confidential Information. In addition to other designations in this

protective order, the Party submitting any Level Two Confidential Information or any other Confidential Information that is not to be distributed to other Parties shall place upon the applicable material the following legend:

**“CONFIDENTIAL  
SUBJECT TO PROTECTIVE ORDER  
TO BE VIEWED ONLY BY THE  
PUBLIC UTILITIES COMMISSION  
OR THE CONSUMER ADVOCATE”**

5. Except for oral and visual Confidential Information disclosed by a Party in the separate informational briefings which is hereby presumed to be Confidential Information of such disclosing Party unless otherwise affirmatively stated by such disclosing Party, if a Party designates information as confidential, it shall produce the Confidential Information in accordance with the procedures described in paragraphs 11 through 14 below, and concurrently provide that Confidential Information in writing to the Commission and the Consumer Advocate. The Party seeking to designate Confidential Information shall: (1) identify the information's source, character, and location to the extent reasonably practicable, (2) state the basis for the claim of confidentiality, and (3) describe the harm or prejudice to the producing Party from any misuse or unauthorized disclosure of the information. If the Commission or any Party challenges the claim of confidentiality of the information, the Party claiming confidentiality shall bear the burden of proof in supporting its claim of confidentiality, and the Commission will determine whether the information is confidential and whether it should be disclosed under the terms of this protective order. Any challenge to the confidentiality of any information shall be made in accordance with paragraph 24 below.







## DISCLOSURE

11. Except as provided in paragraph 13 below, Confidential Information shall not be made available or disclosed to any person who is not a “qualified person” as defined in paragraph 12 below.

12. Subject to the condition provided in paragraph 4 above, limiting the availability of Level Two Confidential Information, “qualified person” or “qualified persons”, as used in this protective order means any one of the following:

- a. The author(s), addressee(s), or originator(s) of the Confidential Information, including its counsel or representative of record;
- b. The Commission, its staff, counsel (including employees directly employed by such counsel), and any consultants retained by the Commission;
- c. The Consumer Advocate, its staff, counsel (including employees directly employed by such counsel), and any consultants retained by the Consumer Advocate for purposes of this proceeding;
- d. The Department of Business, Economic Development & Tourism, its staff, counsel (including employees directly employed by such counsel), and any consultants retained by the Department of Business, Economic Development & Tourism;
- e. Subject to paragraph 4 above, the Parties (which shall include their respective officers, employees, counsel (including employees directly employed by such counsel), and any consultants retained by such Party for purposes of this proceeding); and

- f. Any other person approved by the Party asserting the claim of confidentiality;
- g. Any other person designated as a qualified person by order of the Commission.

13. When a qualified person wishes to disclose Confidential Information to a non-qualified person, the qualified person must request permission from the Party claiming confidentiality. The request shall identify the non-qualified person to whom disclosure is desired; disclose any past, present, or anticipated affiliation between the qualified person and the non-qualified person; specify the exact information to be disclosed; and state the reasons for the requested disclosure. If permission is granted by the Party claiming confidentiality, disclosure of the Confidential Information shall be made to such non-qualified person in the same manner as provided for qualified persons in paragraph 14 below. In the event that Confidential Information is for any reason produced or disclosed to a non-qualified person without the permission of the Party claiming confidentiality, all Parties shall have the right to recall Confidential Information from all qualified persons or holders of such information and to take all steps deemed necessary by the Party or Parties to protect the Confidential Information from production or disclosure. Such qualified persons or holders shall retrieve all Confidential Information from all recipients and return the Confidential Information to the Party claiming confidentiality.

### PROCEDURE FOR OBTAINING ACCESS

14. Prior to disclosing Confidential Information to a qualified person other than the Commission and its staff, the qualified person shall read a copy of this protective order, complete a copy of the protective agreement attached as Exhibit A to this protective order, sign the completed copy of the protective agreement, and deliver the executed protective agreement to the Party claiming confidentiality and to the Commission.

### USE OF CONFIDENTIAL INFORMATION

15. Any Confidential Information obtained under this protective order shall be used solely in connection with the Commission's evaluation of the ethanol blending mandate and the impact, if any, on the provisions of HRS Chapters 486H, as amended, and shall not be used for any other purpose, including business, governmental or commercial purposes, or in any other administrative or judicial proceeding, except as provided in paragraphs 16 and 17, and except as may be directed by (a) an order of court or (b) an order of the Commission.

16. Any confidential information obtained under this protective order may be used by the Commission and its staff and counsel in connection with the Commission's evaluation of the ethanol blending mandate and where the intended use of such confidential information is for the purpose of assisting the Commission in fulfilling its statutory duties and responsibilities under HRS Chapters 486H, as amended. The confidential information shall continue to be treated as confidential until the protection



## RETENTION OF CONFIDENTIAL INFORMATION

19. Confidential Information shall be retained in a locked cabinet dedicated to the storage of Confidential Information, or otherwise secured to ensure that access to and disclosure of the Confidential Information is limited to a qualified person.

20. Confidential Information that is given to or filed with the Commission or its staff shall be separately bound and placed in a sealed envelope or other appropriate sealed container on which shall appear the following legend:

**“THIS ENVELOPE IS SEALED PURSUANT TO PROTECTIVE ORDER NO. \_\_\_\_\_ AND CONTAINS DOCUMENTS WITH CONFIDENTIAL INFORMATION. IT IS NOT TO BE OPENED OR THE CONTENTS OF THIS ENVELOPE DISPLAYED OR REVEALED EXCEPT TO QUALIFIED PERSONS AUTHORIZED TO INSPECT THE ENCLOSED DOCUMENTS.”**

If the Confidential Information is not to be distributed to another Party or Parties the sealed envelope or other appropriate sealed container shall have the following legend instead of the preceding legend:

**“PUBLIC UTILITIES COMMISSION OR CONSUMER ADVOCATE USE ONLY. THIS ENVELOPE IS SEALED PURSUANT TO PROTECTIVE ORDER NO. \_\_\_\_\_ AND CONTAINS DOCUMENTS WITH CONFIDENTIAL INFORMATION. IT IS NOT TO BE OPENED OR THE CONTENTS OF THIS ENVELOPE DISPLAYED OR REVEALED EXCEPT TO THE PUBLIC UTILITIES COMMISSION OR THE CONSUMER ADVOCATE”**

21. Confidential Information shall not be reproduced or duplicated, except to make working copies and copies to be filed with the Commission under seal. If a document contains information so sensitive that it should not be copied by anyone, the Party claiming confidentiality shall have the following legend placed on each page of the document:

**“Copying Prohibited”.**

22. If a court or other administrative agency requests, subpoenas, or orders production of Confidential Information that a Party or person has obtained under this protective order from another Party, that Party or person shall immediately notify the Party claiming confidentiality of the request, subpoena or order, and not produce that information until the Party claiming confidentiality has had a reasonable opportunity to seek a court order or take such other action as it deems necessary to preclude production of its Confidential Information pursuant to the request, subpoena or order.

**DURATION OF CONFIDENTIALITY**

23. The confidentiality of the information produced pursuant to this protective order shall be preserved until all interested parties, by written stipulation, waive the protection conferred by this protective order.

**APPEAL TO THE COMMISSION**

24. If any Party disagrees with the designation of information as confidential, the Party claiming confidentiality and the Party so disagreeing shall first make a good faith attempt to resolve the dispute on an informal basis. If the dispute cannot be resolved, the Party contesting the confidentiality of the information shall file a motion to compel disclosure or any other appropriate motion with the Commission. The Party claiming confidentiality shall bear the burden of proof in supporting its claim, and the Commission will determine whether the information shall continue to be designated as confidential under this protective order. The motion shall identify the contested



information and the specific reasons the information should not be classified as confidential. Pending a disposition of the motion, the information in question shall continue to be treated as Confidential Information and shall not be disclosed except as permitted in this protective order.

#### NON-WAIVER OF OBJECTIONS AND RIGHTS

25. The Parties retain the right to contest any assertion or finding of confidentiality or of non-confidentiality. The Parties retain the right to question, challenge, and object to the admissibility or submission of Confidential Information on the ground of relevancy or materiality.

26. Notwithstanding anything to the contrary, nothing in this Stipulation for Protective Order creates any obligation to disclose or exchange any Confidential Information.

#### MODIFICATION OF THE PROTECTIVE ORDER

27. The Commission may upon good cause modify this protective order on the motion of any Party, or on its own motion, upon reasonable notice to the Parties and an opportunity for hearing.

#### DISPOSAL OF CONFIDENTIAL INFORMATION

28. Except as provided in paragraphs 29 and 30 below, within 90 days after the conclusion of this proceeding or when the Commission determines the Confidential Information is no longer required for purposes of this proceeding, whichever is earlier,

persons in possession of Confidential Information shall, at the option of the Party producing the Confidential Information, return or destroy all such materials and all copies, notes, tapes, papers, or other medium containing, summarizing, excerpting, or otherwise embodying any Confidential Information. If the Party producing the Confidential Information requests destruction, the person destroying the information shall certify its destruction to the producing Party, indicating the name of the person destroying the Confidential Information, the method of destruction, when the Confidential Information was destroyed, and the identity of the specific materials, copies, notes, tapes, etc. containing Confidential Information that has been destroyed.

29. Counsel and the representative of record for a Party shall be entitled to retain memoranda, pleadings, exhibits of record, written testimony, and transcripts embodying information derived from or incorporating Confidential Information properly made available to such Counsel and the representative of record for a Party to the extent reasonably necessary to preserve files on this proceeding. Those files shall not be disclosed to any person, entity, government agency or anyone else who is not a qualified person.

30. Confidential Information produced in this proceeding shall remain in the possession of the Commission, the Consumer Advocate and counsel for the Consumer Advocate for the duration provided by applicable statutory authority.

### SANCTIONS

31. Any person violating this protective order shall be subject to sanctions imposed by the Commission.







32. Any person violating this Protective Order shall be subject to sanctions imposed by the Commission, and as provided by law.

COUNTERPARTS

33. This Stipulation for Protective Order may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

DATED: Honolulu, Hawai'i, March 2, 2006.

---

MICHAEL H. LAU  
KENT D. MORIHARA  
Moriwara Lau & Fong LLP  
Attorneys for Chevron U.S.A. Inc.

---


JON S. ITOMURA  
Attorney for the  
Division of Consumer Advocacy  
Department of Commerce and Consumer  
Affairs

---

CRAIG I. NAKANISHI  
SHAH J. BENTO  
Rush Moore LLP  
Attorneys for Tesoro Hawaii Corporation

---

CLIFFORD K. HIGA  
BRUCE NAKAMURA  
KENNETH M. NAKASONE  
Kobayashi, Sugita & Goda  
Attorneys for Shell Oil Company



---

KELLY G. LAPORTE  
MARC E. ROUSSEAU  
Cades Schutte LLP  
Attorneys for Hawaii Petroleum Marketers  
Association

APPROVED AND SO ORDERED THIS \_\_\_\_\_, 2006,  
at Honolulu, Hawaii.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By \_\_\_\_\_  
Carlito P. Caliboso, Chairman

By \_\_\_\_\_  
Wayne H. Kimura, Commissioner

By \_\_\_\_\_  
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

\_\_\_\_\_  
Nichole K. Shimamoto  
Commission Counsel

EXHIBIT A

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

PROTECTIVE AGREEMENT

1. I, \_\_\_\_\_, have been presented with a copy of Protective Order No. \_\_\_\_\_ issued by the Hawaii Public Utilities Commission in Docket No. 05-0002 on the \_\_\_\_\_ day of \_\_\_\_\_, 2006 ("Protective Order").

2. I am employed, retained or assisting \_\_\_\_\_ in Docket No. 05-0002 and have requested review of the Confidential Information covered by the Protective Order.

3. I understand the Confidential Information covered by the Protective Order is to be used solely on behalf of \_\_\_\_\_, for purposes of Docket No. 05-0002, and that unless otherwise permitted by the Protective Order, I am to make no other use of the Confidential Information, nor am I to disclose the Confidential Information to any other person, entity, government agency or anyone else.

4. I further understand that at the conclusion of my status as a qualified person as defined in the Protective Order, I shall account for each copy, extract, note and summary of, or other document containing any part of such Confidential Information, to the Party claiming confidentiality and I shall abide by the provisions in paragraph 28 of the Protective Order, unless otherwise permitted by paragraphs 29 and 30 of the Protective Order.

5. I hereby certify that I have read the above-mentioned Protective Order and agree to abide by its terms and conditions.

DATED at \_\_\_\_\_, \_\_\_\_\_, this \_\_\_\_\_, 2006.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Address

(\_\_\_\_\_) \_\_\_\_\_  
Telephone Number



## CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Protective Order No. \_\_\_\_\_, upon the following party (parties) by hand delivery or by mail, postage prepaid and properly addressed.

DIVISION OF CONSUMER ADVOCACY  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
P. O. Box 541  
Honolulu, Hawaii 96809

JON S. ITOMURA, ESQ.  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
P. O. Box 541  
Honolulu, Hawaii 96809

ALBERT CHEE, SR.  
CHEVRON U.S.A. INC.  
91-849 Malakole St.  
Kapolei, Hawaii 96707

MICHAEL H. LAU, ESQ.  
KENT D. MORIHARA, ESQ.  
MORIHARA LAU & FONG LLP  
841 Bishop Street, Suite 400  
Honolulu, Hawaii 96813

TESORO HAWAII CORPORATION  
Attn: Leslee Ellenson  
91-325 Komohana St.  
Kapolei, Hawaii 96707-1713

CRAIG I. NAKANISHI, ESQ.  
SHAH J. BENTO, ESQ.  
RUSH MOORE LLP  
737 Bishop St., Suite 2400  
Honolulu, HI 96813

DANNY BATCHELOR  
SENIOR COUNSEL  
SHELL OIL COMPANY  
P. O. Box 2463  
Houston, TX 77252-2463

CLIFFORD K. HIGA, ESQ.  
BRUCE NAKAMURA, ESQ.  
KOBAYASHI, SUGITA & GODA  
First Hawaiian Center  
999 Bishop St., Suite 2600  
Honolulu, HI 96813

HAWAII PETROLEUM MARKETERS ASSOCIATION  
c/o ROBERT W. FUNG, PRESIDENT  
P. O. Box 500  
Honolulu, HI 96809

KELLY G. LAPORTE, ESQ.  
MARC E. ROUSSEAU, ESQ.  
CADES SCHUTTE LLP  
1000 Bishop St., Suite 1200  
Honolulu, Hawaii 96813

Dated: \_\_\_\_\_, 2006

---

Karen Higashi  
Chief Clerk